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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

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In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

December 3, 2013

2:13 PM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

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2 Status Conference

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1 P R O C E E D I N G S

2 THE COURT: Okay. Mr. Eckstein. Let's try it again.

3 MR. ECKSTEIN: Thank you, Your Honor. Your Honor,
4 we're here today in a status conference in the ResCap case, and
5 we're following up on the call we had with Your Honor Wednesday
6 afternoon before Thanksgiving when we reported that the
7 parties, the plan proponents, the consenting claimants and
8 representatives of the JSNs had reach an agreement in principal
9 to resolve the remaining objections by the JSNs to the plan and
10 to resolve the JSN adversary proceedings that were pending
11 before Your Honor.

12 Fortunately, we've been able to utilize the time
13 between Wednesday and today -- with the exception of
14 Thursday -- to build a consensus around documents. And while
15 we had aspired to file the documents yesterday, I guess, as
16 proven to be the case more than once in this case, we got them
17 filed, but we got them filed only a short time prior to today's
18 hearing.

19 As a result, I can assume that Your Honor, at best, is
20 only had a chance to peruse the documents --

21 THE COURT: I looked at the 77 changed pages, not the
22 other 378 -- or 378 minus 77.

23 MR. ECKSTEIN: I appreciate that, Your Honor, and to
24 that extent we tried, but I apologize for the fact that it came
25 in later than we have hoped.

1 THE COURT: Right.

2 MR. ECKSTEIN: What I would propose to do today is
3 give Your Honor a more detailed report on essentially the
4 nature of the agreement and then Mr. Lee will address how we
5 intend to proceed between now and next Wednesday and really
6 address with the Court how Your Honor would like us to be most
7 effective at the hearing that's currently scheduled for
8 Wednesday, December 11th.

9 So, if I may, Your Honor, let me briefly describe the
10 agreement that's been reached, and it's frankly a simple deal.
11 I don't need to belabor all of the history because Your Honor
12 has lived it quite intensely over the last several weeks.

13 THE COURT: The several weeks?

14 MR. ECKSTEIN: It all seems to -- it all seems to meld
15 into a long, long, intensive period of time.

16 THE COURT: It has been a long, intensive period of
17 time.

18 MR. ECKSTEIN: There really has not been a lot of lag
19 time since May of 2012 in this case, I mean, when it comes down
20 to it. But as a result of the good offices of Judge Peck who
21 continued to cajole and encourage the parties to dialogue and,
22 in the midst of the phase 2 litigation and the confirmation
23 hearing, the parties were able to reach an agreement that
24 provides for a compromise and settlement with the JSNs that
25 would provide for a payment of all unpaid principal and pre-

1 petition interest, plus a payment of 125 million dollars that
2 would be in full satisfaction of all amounts that are due and
3 owing to the JSNs in respect to post-petition interest, fees,
4 costs, expenses, indemnities and any other claim or obligation
5 that might be due and owing to the JSNs in connection with
6 their claims in the ResCap case.

7 The payments will be made to the JSNs in cash, and
8 it's contemplated that the payments will be made either on or
9 one day following the effective date of the plan, and the
10 documentation contemplates, and one of the important elements
11 of the transaction was that the plan will go effective during
12 2013. And as Your Honor will see, in the changed documents we
13 contemplated that the estate will use best efforts to go
14 effective by December 19th and has agreed to go effective by
15 December 24th.

16 That obviously entails certain important assumptions.
17 The first assumption is that the Court will be comfortable
18 entering a confirmation order on or about December 11th, and it
19 also assumes that the Court will be comfortable in light of
20 the, we think at this point, overwhelming consensus in the case
21 and the resolution of what we believe are essentially all
22 objections to confirmation, that the Court will be comfortable
23 waiving the automatic stay in Rule 3020(e) of the Bankruptcy
24 Rules, to allow the plan to go effective without waiting the
25 fourteen days.

1 In the event the Court is able to address those two
2 assumptions satisfactorily, we believe, as a business matter,
3 the estate will be in position to go effective certainly by the
4 24th, and we actually believe we can do so by the 19th of
5 December. And we spoke this morning with Mr. Brodsky who's the
6 liquidating trustee who is readying to assume his
7 responsibilities, and both Mr. Brodsky and the debtor have
8 indicated as a business matter that they would be prepared to
9 go effective on that timetable.

10 And we would hope, assuming appropriate notices and
11 approvals can be obtained that in addition to going effective,
12 we would endeavor, assuming we have the time, to actually make
13 an initial distribution in respect to the liquidating trust
14 units before the end of 2013, although that is a somewhat more
15 ambitious task. But we certainly will be in a position to go
16 effective and we think if we aren't able to make the initial
17 distributions on the units before the end of the year, we will
18 be able to do during the early part of January.

19 So we think that, from a timetable standpoint, this
20 resolution is extremely advantageous to the estate and all
21 creditors and will allow the estate to satisfy the goals that
22 we have of emerging during 2013.

23 As Your Honor recalls, we had a December 15th deadline
24 in the original plan, and as part of the amendment, AFI has
25 agreed to extend its closing deadline as well to December to --

1 no later than December 24th, so that would be consistent with
2 the deadline that we've agreed to in connection with the
3 settlement of the JSNs.

4 But, again, Your Honor, this is very much dependent
5 upon the Court being comfortable that it will be in a position
6 to enter the confirmation order and waive the 3020(e) stay. I
7 wanted to highlight those things at the outset, and to the
8 extent Your Honor needs any support for those items, we should
9 try to flag that and we'll be in a position to provide that to
10 Your Honor either prior to or in connection with the December
11 11th hearing.

12 The plan contemplates that -- we already have fairly
13 broad, if not overwhelming, support from the consenting
14 claimants and from the JSNs for the settlement that's been
15 reached. There were a few parties who were waiting for the
16 filing of the plan documents to be able to review the terms
17 publicly and we're hopeful that, to the extent there are any
18 remaining members of the consenting claimant group who need to
19 provide formal support, we'll have that in hand by tomorrow.

20 But at this point in time, we're satisfied that there
21 is sufficient consensus both on the consenting claimants' side
22 of the JSN side that this settlement has business support and
23 will have legal support necessary for the Court to approve this
24 next week.

25 What's contemplated is that a notice is going to be

1 provided today to all JSN holders and the amendment
2 contemplates that the JSNs will have an opportunity to change
3 their vote to accept the plan. The members of the ad hoc group
4 and the other JSN holders who we've been dealing with in
5 connection with the settlement have indicated that they intend
6 to change their vote and we've been advised that, even before
7 the notice goes out, more than ninety percent of the JSNs will
8 have agreed to change their vote to support a plan.

9 THE COURT: By number and amount?

10 MR. ECKSTEIN: I know by amount. Mr. Uzzi can speak
11 in more specifics as to number because it's a little more
12 complicated to compute, but I know that in amount we have more
13 than ninety percent that have already indicated that they are
14 going to be supportive.

15 THE COURT: Let me ask this. To your knowledge, are
16 there any remaining objections from JSN holders?

17 MR. ECKSTEIN: We are not aware of any remaining
18 objections from JSN holders and we don't expect that any will
19 surface, but the intention was to give the notice out today,
20 and give all JSN holders the opportunity to change their vote.

21 The way the amendment is structured, the JSNs in
22 various configurations -- there's a JSN -- there's the ad hoc
23 group, there's the JSN holders, there's the current indenture
24 trustee, there the former indenture trustee, there's the
25 collateral agent. So there are many JSN entities. They're

1 going to be treated exculpated parties under the plan, and
2 they're going to be beneficiaries of a release under the plan.

3 The plan contemplates that those JSN holders who
4 change their vote and vote in favor of the amended plan will be
5 the beneficiaries of the exculpated parties. So we wanted to
6 make sure that people had an opportunity to change their vote
7 between now and next Wednesday so that they could, if they
8 wanted to, be beneficiaries of the exculpation; to the extent
9 the Court approves it, they could do so.

10 THE COURT: Sir, it may be that Mr. Uzzi or Mr. Shore
11 are better able to answer this, but have all members of -- all
12 current members of the ad hoc group indicated their plan to
13 support -- their intention to support the amended plan?

14 Mr. Uzzi?

15 MR. UZZI: For the record, Gerard Uzzi of Milbank
16 Tweed for the ad hoc group. Because it just became public,
17 Your Honor, we haven't had the opportunity to communicate with
18 everybody.

19 Where things stand now, based upon our review of the
20 voting certification and our conversations with the large
21 holders, we fully expect to be able to deliver an accepting
22 class both in amount and by number.

23 I don't have a reason to believe now that we are not
24 going to get complete support from the ad hoc group. And what
25 we have, Your Honor, just to, if I may, lay a little bit of a

1 foundation, the ad hoc group is about fifty percent, roughly,
2 of the outstanding issue; Berkshire is about forty percent.
3 Between Berkshire and the members of the ad hoc group, I've
4 already communicated with eighty percent.

5 There is probably another ten percent that we'll call
6 cats and dogs which --

7 THE COURT: You don't want to call them that, but
8 that's all right.

9 MR. UZZI: That -- well, ten percent that are just
10 outside --

11 THE COURT: Dogs bite sometimes.

12 MR. UZZI: And cats scratch.

13 THE COURT: Yeah.

14 MR. UZZI: We'll -- in fairness to those, we'll work
15 with the debtors and try to get a communication out to them as
16 well, Your Honor.

17 THE COURT: Let me ask this, and I don't really care
18 who responds to this, but what is the difference, if any, in
19 treatment of JSNs that consent and switch their votes and those
20 who do not?

21 MR. UZZI: Those who do not -- those who vote -- those
22 who have already voted no and don't switch their vote, so
23 therefore, they're still voting no, are not entitled to the
24 debtor releases --

25 THE COURT: They get the same cash --

1 MR. UZZI: -- and the exculpation --

2 THE COURT: -- distribution but they don't get the
3 release.

4 MR. UZZI: They get the same cash distribution.

5 THE COURT: They don't give or get the release.

6 MR. UZZI: They don't -- well, they have the third-
7 party release imposed upon them, but the mutual consensual
8 releases, they neither give nor get.

9 THE COURT: Okay. Are there any other differences?

10 MR. UZZI: That's the only difference, Your Honor.

11 THE COURT: Okay. Thank you.

12 Mr. Eckstein?

13 MR. ECKSTEIN: And that is the only difference, Your
14 Honor, and I think it's important -- we are not expecting that
15 there's going to be any dissent on either side of the deal, but
16 obviously, we do need to go through the steps to make sure that
17 everybody has been given an opportunity to participate and be
18 heard. And one of the questions that we can get to when we get
19 to the process is whether the Court is comfortable with the
20 process that we're following which is essentially the
21 submission of a notice and present the confirmation order next
22 Wednesday giving people an opportunity, if they want to be
23 heard in connection the proposed plan amendment, to do so at
24 next Wednesday's hearing and whether or not people should have
25 a deadline to file something, in the off chance that people are

1 going to want to file something.

2 THE COURT: Right. Why don't you address the issue of
3 whether resolicitation of the disclosure statement in voting
4 solicitation is required.

5 MR. ECKSTEIN: Sure, Your Honor. I had planned to do
6 that. I think as I mentioned last Wednesday --

7 THE COURT: Let me just say before you go on, there
8 was a call at 4 o'clock last Wednesday. It was certainly the
9 JSNs' counsel, the committee counsel, debtor counsel, and there
10 were -- it was not on the record. I did it from home.

11 MR. ECKSTEIN: AFI, I believe was there.

12 THE COURT: AFI's counsel, Mr. Schrock, was on the
13 phone. It was arranged on very short notice. The substance of
14 the call was quite -- relatively brief. I mean, I was told
15 that an agreement in principle had been reached with the
16 majority of the JSN holders and consenting creditors, but not
17 all.

18 I did not ask and I was not told -- I didn't want to
19 know at the time of the call -- what the proposed settlement or
20 resolution was. There was no discussion about what the terms
21 of any resolution were at that time. So I was informed that
22 substantial progress had been made in the mediation with Judge
23 Peck, and they were pleased to report that an agreement in
24 principle, subject to further negotiation had been
25 accomplished.

1 There was also a brief discussion about -- and Mr.
2 Kerr was on the phone with Mr. Lee, and Mr. Kerr asked to
3 adjourn the deadline for filing post-hearing briefs. And I
4 agreed to adjourn that for one week. But it was discussed, and
5 I concluded, that the proposed findings of fact should be
6 submitted by December 5th, which was the deadline established
7 at the close of the evidence. And I expect that that will
8 occur.

9 This conference today was agreed upon as the date and
10 time. There was -- I also said I was, at lea -- I was
11 prepared, at least, to go forward on December 11th without
12 committing as to what would occur at that time. I asked a
13 question during that call that I just asked Mr. Eckstein again
14 now about whether the coproponents believe that a
15 resolicitation would be required. Mr. Eckstein's answer then
16 was essentially what it has been now.

17 There was a very, very brief discussion about other
18 objections to confirmation that had been filed. The
19 objections -- two objections of Wells Fargo, they were not
20 discussed in substance, just they were referenced that there
21 were those. Mr. Rode, who was here in Court and argued
22 briefly, his objection to confirmation was mentioned.

23 My recollection is that that, in sum and substance,
24 was the discussion last Wednesday, and I -- the only other
25 thing at the end of the call, I directed -- I ordered that none

1 of the associates in any of these firms work on Thursday. But
2 other than that, nothing else transpired during the call.

3 So, but go ahead, Mr. Eckstein. I just wanted to put
4 that on the record. That was not a call on the record. It was
5 raised on very short notice to keep me apprised that there had
6 been this progress.

7 MR. ECKSTEIN: Thank you, Your Honor, for making that
8 clarification. That was our recollection of the conversation
9 as well.

10 Your Honor, we've given careful consideration to the
11 question of whether or not resolicitation is required. As Your
12 Honor know, the plan that was disseminated for voting expressly
13 contemplated the possibility that the JSNs could, in the event
14 the Court ordered so, receive full post-petition interest, in
15 addition to their principal and pre-petition interest.

16 And in the disclosure statement, we laid out in fairly
17 extensive detail the potential ranges of recoveries to each
18 class of unsecured creditors at ResCap, RFC and GMAC. And in
19 fact, if Your Honor were to look at pages 10, 11, and 12 of the
20 disclosure statement, Your Honor will see that, for example, on
21 page 10 of the disclosure statement, when it talks about the
22 treatment of ResCap unsecured creditors, there is a range of
23 recoveries between 31.5 percent and 41.9 percent. And footnote
24 17 expressly describes the fact that the amount of recovery to
25 unsecured creditors could depend upon whether or not the JSNs

1 are ultimately entitled to post-petition interest. And that
2 disclosure is made similarly for the GMAC creditors and the RFC
3 unsecured creditors.

4 And so when people were asked to vote on this plan,
5 they voted with the understanding that there might be a
6 dilution to unsecured creditors for potentially the full amount
7 of post-petition interest.

8 Further in the disclosure statement, if you look at
9 page 38 of the disclosure statement, there's actually an
10 extensive discussion of the JSN litigation and the risks
11 associated with the JSN litigation. And then if you were to
12 turn to page 171 of the disclosure statement, there's actually
13 a description of the risk factor associated with the
14 possibility that recoveries to unsecured creditors could be
15 reduced by the potential full amount of the JSN payment.

16 So in the first instance, we think that everybody who
17 voted on this plan, voted with a full knowledge and
18 understanding that there could be a complete award of post-
19 petition interest and a reduction. And creditors voted to
20 accept the plan notwithstanding that risk.

21 In addition to this, the fact of the matter is that
22 the debtor has done a careful monitoring of the recoveries and
23 the fact is that, even with settlement to the JSNs, the
24 projected recoveries to unsecured creditors are equivalent to,
25 if not better than, what creditors would have hoped to have

1 receive because the estate has actually performed well in terms
2 of recoveries and claims resolutions.

3 And so on really any approach one might take to how
4 creditors are being treated under this plan, based upon what
5 they expected as compared to what they'll receive as a result
6 of this settlement, there is no adverse treatment to any
7 unsecured creditors.

8 And so we think from a disclosure stand -- well, and a
9 solicitation standpoint, this is not a settlement that requires
10 resoliciting creditors, because, in fact, we think creditors on
11 every level are being treated better than what they had
12 expected might have happened absent a settlement.

13 Additionally, and Your Honor can consider this, we
14 think in connection with review of the findings of fact and the
15 confirmation order, the complexities and the risks associated
16 with this litigation, obviously, were quite extensive.

17 In addition to the post-petition interest, the JSNs
18 have advised us that they've incurred fees of between fifty-
19 four and fifty-six million dollars in connection with this
20 litigation, which they are going to seek to be repaid under
21 their indenture. And the JSNs have taken the position that
22 they're entitled to be repaid regardless of whether the Court
23 finds that they're oversecured. And there is certainly case
24 law in the Second Circuit that would lend support to that
25 argument. And there could be, obviously, a lot of debate about

1 what amount of fees might or might not be appropriate.

2 But needless to say, in addition to the post-petition
3 interest issue that was hotly contested, the settlement has the
4 benefit of both resolving the estate's obligations with respect
5 to repayment of fees and bringing to a close the very, very
6 dramatic, ongoing incurrence of fees that would have continued
7 with the competing findings of fact, the closing arguments and
8 what, invariably, was going to be post-confirmation litigation
9 certainly on phase 1 and presumably on confirmation in phase 2,
10 had there not been a resolution of this litigation.

11 So the benefits to the estate of bringing a resolution
12 to this case, both from an expense standpoint and from a timing
13 standpoint, are quite material and we think that, given the
14 extensive prominence that this litigation has had in the case
15 and the right that every has had to participate and the
16 extensive participation by so many parties, we believe that
17 it's appropriate for the Court to consider this resolution in
18 connection with the plan amendment as we're proposing.

19 So that's a long answer to: we don't think
20 resolicitation is necessary, Your Honor.

21 I don't know if Your Honor has any more questions
22 about the elements of the settlement. As I said, the
23 settlement is fairly straightforward and fairly simple --

24 THE COURT: Well, I -- excuse me.

25 MR. ECKSTEIN: -- and, obviously, entails a

1 compromised.

2 THE COURT: Yeah.

3 MR. ECKSTEIN: Both sides had great difficulty in
4 getting to the compromise, but got there. And --

5 THE COURT: It's all packed into the new paragraph 155
6 on page 18 of the amended plan, a definition section.

7 MR. ECKSTEIN: Yes, a lot of things are baked into the
8 definition section, but the number is fairly straightforward,
9 Your Honor, and the -- consistent with so many of the other
10 issues in this case, the essential ingredient to this
11 settlement was global resolution of all disputes. And that was
12 really the hallmark of this resolution as well, and the fact
13 that there are no loose ends to this settlement, we felt was
14 another very important component of this, is that the estate,
15 Ally and the JSNs are all getting complete closure.

16 The issues that we were anticipating with the
17 indenture trustees, the indemnity issues, those are being
18 resolved and don't have to be addressed. So we think that the
19 closure that is built into this settlement is very much
20 consistent with the plan and is consistent with the fact that
21 all of the litigation surrounding the ResCap-related issues are
22 beings resolved now as part of the global settlement of the
23 plan.

24 THE COURT: I guess my question, and, again, I don't
25 care whether you or Mr. Lee or someone else addresses it is,

1 what remaining objections must the Court resolve?

2 MR. ECKSTEIN: Your Honor, I'm gonna -- I'm gonna let
3 Mr. Lee address that when he addresses the confirmation, but
4 the short answer is, we know that Mr. Rebo (ph.) is still
5 unresolved. The Wells issues are resolved, and --

6 THE COURT: Well, both Wells? Because there were two
7 Wells issues: Wells as collateral agent, and Wells as
8 successor to Wachovia.

9 MR. ECKSTEIN: I believe both of the Wells issues
10 are --

11 UNIDENTIFIED SPEAKER: Wachovia is --

12 MR. ECKSTEIN: Well, the Wachovia issue I know is
13 still open, and Mr. Schrock is going to describe how that's
14 being handled, but we think that that issue, for purposes of
15 the Court's consideration, is going to be address
16 satisfactorily.

17 THE COURT: Okay.

18 MR. ECKSTEIN: So the Court will not have to be
19 concerned about --

20 THE COURT: But Wells as collateral agent has been
21 solved -- resolved?

22 MR. SCHAFFER: Your Honor, Eric Schaffer, Reed Smith
23 for Wells as collateral agent. A lot of what's happened in the
24 last week has been on a need-to-know basis and we haven't been
25 in the middle of everything. I'm not complaining,

1 necessarily --

2 THE COURT: I didn't need to know and didn't want to
3 know what the terms were until you got here today --

4 MR. SCHAFFER: Right.

5 THE COURT: -- okay?

6 MR. SCHAFFER: And we only printed out the revised
7 plan on our way down here, but in a nutshell, what we've agreed
8 to is that we withdraw our objection and agree that there's no
9 reserve required. In exchange for that, we are to get releases
10 from the JSNs and any counterparties to our agreements, and we
11 get our reasonable fees and expenses. That's it.

12 THE COURT: Mr. Lee?

13 MR. LEE: Good afternoon, Your Honor. Gary Lee from
14 Morrison & Foerster for the debtors. Just starting with your
15 last question, subject to what Mr. Schrock has to say about
16 Wachovia, the remaining objection that Your Honor needs to
17 address were the three joinders to the Nora objection that was
18 withdrawn; that was Mr. Rode and two others whose names I don't
19 recall as I stand here right now. And that would be the sum
20 total of it.

21 And those objections, Your Honor will recall, were not
22 to exculpation nor to the releases. They were to the best-
23 interest test; that was my recollection. So Your Honor, what
24 we propose to do is --

25 THE COURT: Have --

1 MR. LEE: Sorry, Your Honor.

2 THE COURT: Has anybody reached out to Mr. Rode? I
3 know that he and Mr. Nosek were communicating in the courtroom
4 and then went out in the hall together, and I think the -- Mr.
5 Rode will do what he wants to do, but through the colloquy and
6 your help and others, while the Court denied Mr. Rode's motion
7 to lift the stay to permit his action in Texas to go forward,
8 his claim remains on file and, at this stage, at least not
9 objected to. So I don't know whether anybody has reached out
10 to Mr. Rode to see whether matters can be resolved with him.

11 MR. LEE: Your Honor, there's been an ongoing dialogue
12 with Mr. Rode --

13 THE COURT: Okay.

14 MR. LEE: -- and the issue is purely economic and --

15 THE COURT: I don't want to get into the details of
16 it. I just wanted to make sure that at least an effort's made
17 to accomplish that.

18 MR. LEE: Yeah, an effort -- an on-going effort and a
19 fairly significant effort, Your Honor.

20 THE COURT: Okay.

21 MR. LEE: So where that leaves is, so on Thursday,
22 Your Honor, we'll be filing two things; one, will be the
23 findings of fact as they relate to confirmation.

24 THE COURT: Can you tell me now whether I'm going to
25 get a single set of proposed findings of fact and conclusions

1 of law?

2 MR. LEE: Your Honor, you will get in fairly
3 abbreviated -- what's now 130 pages, a consolidated set of
4 findings of fact. They went over to the JSNs and to AFI today.
5 There will be one set of findings of fact.

6 It's 130 pages that now, with the five other law firms
7 that will see it, it will flourish and grow, but it will be
8 complete and it will be one document.

9 THE COURT: Okay.

10 MR. LEE: And we'll also be filing on Thursday the
11 revised confirmation order.

12 So based on the last discussion we had at the
13 conclusion of the confirmation hearing, what we're going to
14 address in the findings of fact are the plan confirmation
15 standards under Section 1129, the mediation, the evidence that
16 supports the settlements, the evidence that supports the
17 exculpation release and third-party releases. And I think
18 that's what Your Honor indicated you wanted. Now, obviously,
19 we'll fold in the JSN settlement as well as part of the
20 findings of fact.

21 So what that really leaves us with, Your Honor, is
22 sort of a question as to how we proceed on Wednesday, whether
23 there's anything specific you want us to address on Wednesday.
24 And so we're really in your hands.

25 We think the findings of fact will be entirely

1 comprehensive.

2 THE COURT: Well, I would like the debtors to -- when
3 you file the proposed findings of fact and proposed
4 confirmation order on Thursday of this week, that you file a
5 notice that objections, if any, to the proposed findings of
6 fact and confirmation order must be filed by 5 p.m. Monday,
7 December 9th.

8 And on the 11th, we're scheduled for 10 a.m. You can
9 certainly address any remaining objections because
10 confirmation, here, is based on evidence already in the record
11 and will be set out in the proposed findings of fact.

12 It will be, obviously, unnecessary to offer -- I mean,
13 you don't anticipate offering any additional -- well, I don't
14 know. Are you offering -- are you going to put in -- and maybe
15 you should do this -- a declaration of an appropriate person,
16 maybe Mr. Kruger, maybe someone else, in support of the
17 comprised -- the court approval of the compromise that's been
18 reached with the JSNs, because that certainly is not in the
19 evidence of record.

20 And so I would hope that you could get that done and
21 filed on Thursday as well. I would like -- I know that's a
22 stretch, but I would like to have -- and then at the hearing on
23 the 11th -- well, I'll give you -- I'll tell you what, I'll
24 give you an extra day. I'll give you to 5 o'clock on the 6th
25 to file it.

1 I want a full evidentiary record. If the Court
2 approves confirmation, I want to be sure there's a full
3 evidentiary record that supports the Court's determination.

4 There certainly was a very full -- I can't -- I'll
5 give anybody else a chance to speak to it. I think the only
6 thing really not covered in my decision from phase 1 or in the
7 evidence from phase 2 would be this issue of this compromise
8 with the JSNs.

9 And just thinking out loud, it seems to me that this
10 compromise, like the global compromise, raises both the
11 confirmation standards and the 9019 standards.

12 I mean, when I read over the change pages and I
13 thought back to the phase 2 trial, in bold strokes, the JSNs
14 were seeking another 400 million dollars. I think it was 340
15 million dollars in post-petition interest, and there was a
16 number in the pre-trial order of 60 million dollars in fees.
17 And so in broad strokes, they were seeking another 400 million
18 dollars.

19 And this settlement provides them with another 125
20 million dollars. That's just looking at the -- just solely at
21 the numbers.

22 There were substantial arguments on both sides as to
23 whether the JSNs were oversecured or undersecured, and if so,
24 by how much. And I'm not going to go through all of that. All
25 right.

1 And like any other compromise, one doesn't try the
2 issue. One looks at whether -- is the debtor in entering into
3 this agreement exercising appropriate business judgment, acting
4 in the best interest of the debtor and the estates.

5 That wasn't intended a complete recitation of the
6 applicable standards, but generally speaking I think that is
7 how I view it. But I want to be sure that we have a full
8 evidentiary record that supports what's being done. To the
9 extent that there's a further agreement with Wells Fargo as
10 collateral agent, because they filed an objection to the claim,
11 the declaration is important. And I think it's probably one
12 declaration that just -- it just ought to touch on that
13 resolution as well. And it just ought to indicate -- something
14 filed ought to indicate what remains for the Court to resolve.
15 There's the Rode objection plus two. They were all joinders in
16 Ms. Nora's now-withdrawn objection. Fine. I just want to
17 clear what it is I need to rule on at the time of confirmation.

18 Is there anything else you want to add now?

19 MR. LEE: No.

20 The only main question was there anything else that
21 you wanted us to address at the hearing? I mean, we can
22 certainly address these factors and they'll be in the
23 declaration, but is there anything else that we need to address
24 be prepared to provide some more --

25 THE COURT: No. And I don't -- look, you do -- with

1 all respect, you don't need to go through each of the 1129
2 factors. I'm very familiar with them. I assume they're going
3 to be covered in detail in the proposed confirmation order.

4 The pre-phase 2/confirmation trial briefs covered
5 extensively briefing on standards for confirming the plan. So
6 I don't need all of that rehashed. If there are any particular
7 points you want to emphasize, I think it probably would be
8 worth briefly, at least, addressing the third-party nondebtor
9 releases. And I think to the issue -- I mean, to the extent
10 that those releases now are consensual, assuming you have
11 almost all of the JSNs on board, I expect to hear that the
12 third-party releases and exculpation have overwhelming creditor
13 support. That was the position that you took with -- other
14 than with respect to the JSNs and a few borrowers.

15 So I don't think -- I'm not going to tell you what to
16 tell me but, I mean, you don't need to go through in great
17 detail each of the 1129 standards. If anyone stands to argue
18 in opposition on the 11th, you'll have a chance to respond.

19 MR. LEE: Okay. Thank you, Your Honor.

20 THE COURT: Okay. Thank you.

21 MR. ECKSTEIN: Your Honor, before letting others. I
22 had mentioned at the outset that the agreement was premised
23 upon the assumption that we would be able to get to an
24 effective date by December 24th, ideally earlier.

25 That was premised upon the assumption that, number

1 one, the Court would be comfortable entering an order on or
2 about the 11th, but also that the Court would be comfortable in
3 connection with confirmation of waiving the stay under Rule
4 3020(e).

5 So to the extent we can get some guidance on that
6 issue, it would be helpful in terms of planning and in terms of
7 knowing whether or not the business deal that was struck, in
8 fact, is one that the Court is comfortable with.

9 THE COURT: Well, I think -- look, perhaps -- because
10 this is a big deal for you the 3020 waiver, and obviously
11 3020(e) permits the Court to order otherwise, you probably
12 ought to address that. I guess you can wait. I don't know,
13 you can wait and see whether we get any objections, but you may
14 want to be proactive and be prepared to assert that.

15 So my understanding of the law generally with respect
16 to waiver of the fourteen days hinges on a couple of things;
17 one, are there any substantial objections. Okay.

18 And that remains, I mean, the 3020(e) specifically
19 provides unless the Court orders otherwise. And so I haven't
20 looked at that recently, but I have this issue comes up. I
21 have waived it in the past. I've generally waived it when
22 there have been no substantial, serious objections to
23 confirmation.

24 Let me leave it at that.

25 MR. ECKSTEIN: Will certainly address it in the

1 declaration so that the Court will have --

2 THE COURT: Okay.

3 MR. ECKSTEIN: -- the evidence to support that request
4 as well.

5 THE COURT: That's fine.

6 MR. ECKSTEIN: But I wanted to make sure it was known,
7 also.

8 THE COURT: Yes.

9 MR. ECKSTEIN: Thank you, Your Honor.

10 THE COURT: Mr. Schrock.

11 MR. SCHROCK: Good afternoon, Your Honor. Ray Schrock
12 of Kirkland & Ellis on behalf of Ally Financial and Ally Bank.

13 Very briefly, regarding Wachovia. We are in
14 discussions with them to resolve their objections.

15 THE COURT: So they're trying to exact a pound of
16 flesh in order for them to go away is that --

17 MR. SCHROCK: Your Honor, without getting into the
18 nature of the discussions --

19 THE COURT: I don't want to know the details, but --

20 MR. SCHROCK: Exactly. My expectation is that that
21 objection will not be an impediment to confirmation, so
22 we're --

23 THE COURT: The rest of the people at the front table
24 will probably get very aggravated if you don't solve it.

25 MR. SCHROCK: I understand, Judge. It's been made

1 clear, believe it or not.

2 But that's my report --

3 THE COURT: Okay.

4 MR. SCHROCK: -- on that. So I expect to be in touch
5 with the Court and parties-in-interest as we work through that,
6 but we were in touch with Winston & Strawn earlier today.

7 THE COURT: All right. Thank you very much,
8 Mr. Schrock.

9 MR. SCHROCK: Thank you.

10 THE COURT: All right, does anybody else wish to be
11 heard?

12 Mr. Uzzi.

13 MR. LEBIODA: Your Honor?

14 THE COURT: Yes, go ahead on the phone.

15 MR. LEBIODA: Telephonically, Nathan Lebioda from
16 Winston & Strawn.

17 THE COURT: Yes.

18 MR. LEBIODA: On behalf of --

19 THE COURT: Just say your name again. I'm sorry, it
20 got blocked out.

21 MR. LEBIODA: Nathan Lebioda.

22 THE COURT: Yes, go ahead.

23 MR. LEBIODA: Sorry we couldn't be there today in
24 person. We're just telephonically calling in.

25 We've been in discussions with K&E, as well. We

1 believe all the evidence is in the record that's necessary,
2 should the need arise for the Court to determine our objection.

3 At the moment our objection continues to be limited
4 solely to the applicability of third-party releases,
5 specifically, also with respect to the request for the 3020(e)
6 relief. We haven't had the opportunity to consider whether we
7 would object to such relief. I'd request that we can reserve
8 our right to do so in any response papers that we may filing by
9 the deadline.

10 THE COURT: Okay. Let me ask -- one question I have
11 is, can I require a bond for giving the fourteen -- just even
12 for that fourteen days thing? Boy, the bond in this case could
13 really be enormous.

14 But go ahead, Mr. Lebioda. I didn't mean to cut you
15 off.

16 MR. LEBIODA: No, that's all right. I think that that
17 covers everything that we had to report on.

18 THE COURT: Okay. Thank you very much.

19 Mr. Uzzi.

20 MR. UZZI: Thank you, Your Honor.

21 I think you can waive the stay and then require a bond
22 to impose the stay just to answer that question, Your Honor.

23 First, Your Honor, I'd like to thank the Court for the
24 call on Wednesday and agreeing to push the briefing schedule to
25 let us get this settlement done.

1 What we had agreed to was to push it for a week, so
2 everything was due this Thursday. They're now due the
3 following Thursday. I don't think anybody wants to be working
4 on briefing so what I've discussed with Mr. Eckstein is that
5 we'll just suspend the briefing now until we get to next
6 Wednesday.

7 And hopefully next Wednesday -- a week from this
8 Wednesday will render further briefing moot.

9 THE COURT: And part of the reason for my agreeing to
10 postpone the briefing is that such extensive briefing was
11 already done before the start of the confirmation hearing phase
12 2 trial.

13 So yes, there are issues that were the focus of phase
14 2, but I think the reason that I was comfortable, am
15 comfortable -- is there anybody who objects to me pushing the
16 date for the further briefing, as opposed to the findings of
17 fact?

18 Hearing none, so that's fine. We'll adjourn it
19 pending further order of the Court.

20 MR. UZZI: Thank you, Your Honor.

21 And just to be precise on the findings of fact, we're
22 going to submit a joint findings of fact that's supportive of
23 this agreement, not findings of fact relating to the issues
24 that would otherwise be in dispute in the phase 2 trial. And
25 obviously, if we get to next Wednesday and for some reason we

1 don't get the plan confirmed, we would revisit at that point
2 how to finalize the pending litigation.

3 THE COURT: Right. And that's a fair point. And I
4 think that I want to be sure that I have all proposed findings
5 of fact that anybody believes are necessary to support
6 confirmation of the plan, if I wind up confirming the plan.

7 Okay. And so I agree, Mr. Uzzi, that if for some
8 reason the plan is not confirmed, we'll regroup as to what the
9 schedule is with respect to phase 2 of the adversary
10 proceedings.

11 MR. UZZI: Thank you, Your Honor.

12 A point of clarification, I presume it's Your Honor's
13 intent, but with respect to setting the objection deadline for
14 this Monday, it is my understanding that it's only with respect
15 to what's being submitted now. This is not going to give other
16 people now a free opportunity to --

17 THE COURT: This is --

18 MR. UZZI: -- raise objections they should have raised
19 before.

20 THE COURT: That's correct. So the change that's
21 taken place --

22 MR. UZZI: Thank you, Your Honor.

23 THE COURT: -- is the compromise with the JSNs. I'm
24 not opening up anew an objection deadline to confirmation.
25 That has long since come and gone.

1 I'm glad you raised that point. This is not an
2 invitation for people to think up objections to other aspects
3 of the plan that they didn't raise before and want to raise
4 now. This is with respect to the changes that have been made
5 to the plan now.

6 MR. UZZI: Thank you, Your Honor.

7 THE COURT: Thank you, Mr. Uzzi.

8 MR. UZZI: And just then I'd like to let you know how
9 the mechanic -- how we plan to go forward with changing the
10 votes and make sure Your Honor is comfortable with it.

11 We want to do this as efficiently and as easily as
12 possible. It's not a very widely held issue. We think we know
13 most of who is holding this. They're either represented by
14 Mr. Walper or myself.

15 What we propose to do is send out a notice today --
16 this evening after this hearing on the docket. The indenture
17 trustee will also set out a notice under DTC that states that
18 if anybody's a member of the ad hoc group they should call me
19 and I will arrange to have their votes changed. And the way I
20 propose to that, Your Honor, is to submit a declaration from
21 myself saying that these people I represent are members of the
22 ad hoc group; they had previously voted against the plan and
23 they now agree to change their votes. And we hope that that is
24 satisfactory for Your Honor.

25 And then with respect to anybody who is not

1 represented by me or Mr. Walper, there will be a contact for --
2 at the debtors where they can contact if they want to change
3 their vote to give them the opportunity to opt into the
4 releases and exculpations.

5 THE COURT: Do you know how many noteholders voted
6 against the plan? Because there were some consenting -- some
7 consenting creditors included some JSNs.

8 MR. UZZI: Yes, that's correct.

9 THE COURT: Do you know how many JSNs voted against
10 the plan that are not represented by you or Mr. Walper?

11 MR. UZZI: I don't know because the only thing -- and
12 this is why we want to do it this way -- the only thing we can
13 see is master ballots from broker dealers that have account
14 numbers on them.

15 And it's been my experience in the past that clerical
16 errors happen along the way. In fact, there's several
17 different voting classes for JSNs and there's actually three
18 different tallies. In one particular class there were fifty-
19 six votes. In another class there was forty-three for
20 instance.

21 THE COURT: Um-hum.

22 MR. UZZI: And we'll do the best we can to match them
23 up. I'm confident that when we're done you're going to see
24 overwhelming support from both an amount and numerosity
25 standpoint. And I think that should be sufficient to declare

1 the JSNs an accepting class.

2 THE COURT: Okay.

3 MR. UZZI: Unless Your Honor has any questions of me,
4 that's all I have.

5 THE COURT: All right. Thank you very much.

6 MR. UZZI: Thank you.

7 THE COURT: Anybody else wish to be heard?

8 All right. We are adjourned. And I'll be waiting
9 with bated breath for findings of fact and the confirmation
10 order.

11 You'll give us -- I don't know that I need the
12 annotated CD or DVD that was going to be -- all right. What's
13 your plan, Mr. Kerr?

14 I still -- no one should think -- we're going to
15 review the proposed findings very carefully. And I want to be
16 sure they're properly supported.

17 MR. KERR: Your Honor, we'll do it anyway Your Honor
18 would like us to. I think that we had a discussion previously
19 about giving a findings of fact with hyperlinks.

20 THE COURT: Linked, yeah. Right.

21 MR. KERR: And I understand that the committee reached
22 out to your chambers today and we were told that's no longer
23 necessary.

24 THE COURT: Right. I just want to make sure we have
25 it on disk or a flash drive or something like that.

1 MR. KERR: Yes, we will give it to you in Word form,
2 whether it's in a flash drive --

3 THE COURT: Right.

4 MR. KERR: -- a disk, whatever is easiest again.

5 We will also be submitting, and I think -- I don't
6 know if it's maybe today a flash drive with all, at least, the
7 exhibits that we're entering into evidence. And we're still
8 trying to get finalized on an exhibit list, but we'll have that
9 for you shortly, as well.

10 Obviously, if there's anything else that Your Honor
11 would -- that would assist in reviewing the records --

12 THE COURT: Let me -- the only thing that was remained
13 up in the air, evidence-wise, was the deposition designation --

14 MR. KERR: That's correct, Your Honor.

15 THE COURT: -- and cross-designations.

16 MR. KERR: And what we -- and again, I've not had an
17 opportunity to speak to Mr. Cohen about this, but what our
18 proposal would be -- and I don't mean to spring this on
19 Mr. Cohen, but we were kind of waiting to see once the amended
20 plan got filed. I think most of the deposition designations
21 that had been submitted really with the phase 2 issues that
22 were -- and what we were going to suggest is that anything that
23 was not objected to, would just remain in, but any objection
24 would just be withdrawn. And my -- rather than spending a lot
25 of time digging through objections --

1 THE COURT: Okay. Work it out Mr. Cohen.

2 MR. KERR: We will work it out.

3 THE COURT: Okay.

4 MR. KERR: We are already on top of this, Your Honor

5 THE COURT: I just, I want to be -- I said this
6 before -- I want to be sure that it's a clear evidentiary
7 record from the hearing that if the Court -- if the Court
8 confirms the plan, it's supported by the evidence in the
9 record.

10 MR. KERR: And that's fine, Your Honor. We'll work
11 with Mr. Cohen on the deposition designations.

12 THE COURT: Okay.

13 MR. KERR: Again, I believe we'll have the exhibits to
14 you today. We'll have exhibit lists, if not today, tomorrow.

15 THE COURT: Okay.

16 MR. KERR: And we'll have our proposed findings of
17 fact both in -- we'll file it on the docket obviously, but
18 we'll also submit it to Your Honor in Word form in a way that's
19 accessible to you and your clerks.

20 THE COURT: Okay. Thank you very much.

21 MR. KERR: Thank you very much.

22 THE COURT: All right. We're adjourned.

23 IN UNISON: Thank you, Your Honor.

24 (Whereupon these proceedings were concluded at 3:06 PM)

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C E R T I F I C A T I O N

I, Hana Copperman, certify that the foregoing transcript is a true and accurate record of the proceedings.

Hana Copperman

HANA COPPERMAN

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